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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF OREGON

10 MARTHA DURBIN,

Civil No. 04-1835-AA  
OPINION AND ORDER

11 Plaintiff,

12 vs.

13 JO ANNE B. BARNHART,  
Commissioner of Social Security,

14 Defendant.

15 \_\_\_\_\_  
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25 AIKEN, Judge:

26 Claimant, Martha Durbin, brings this action pursuant to the  
27 Social Security Act (the Act), 42 U.S.C. § 405(g), to obtain  
28

1 judicial review of a final decision of the Commissioner. Durbin  
2 brings this action as the Guardian on behalf of Jesse Chapman,  
3 the minor beneficiary of the Claim of Marlene Chapman, Deceased.  
4 The Commissioner denied plaintiff's application for Disability  
5 Insurance Benefits (DIB) under Title II of the Social Security  
6 Act. 42 U.S.C. §§ 401-34. For the reasons set forth below, the  
7 Commissioner's decision is reversed and remanded for payment of  
8 benefits.

#### 9 PROCEDURAL BACKGROUND

10 Plaintiff protectively filed her application for DIB on  
11 March 27, 2002. Tr. 12. She alleged disability since September  
12 1, 1999, due to a heart condition, knee problems, migraines,  
13 reflex sympathetic dystrophy (RSD) in the right arm, a history of  
14 collarbone surgery, post-traumatic stress disorder (PTSD),  
15 anxiety, and depression. Tr. 13. Her applications were denied  
16 initially, and upon reconsideration. On May 11, 2004, after a  
17 hearing, the Administrative Law Judge (ALJ) ruled that plaintiff  
18 was not disabled as defined in the Social Security Act. Tr. 12-  
19 22. On October 15, 2005, the Appeals Council denied plaintiff's  
20 request for review, tr. 4-6, making the ALJ's decision the final  
21 agency decision. See 20 C.F.R. §§ 404.981, 422.210.

#### 22 STATEMENT OF THE FACTS

23 Born December 13, 1953, plaintiff was 50 years old at the  
24 date of the ALJ's decision. Tr. 13. She obtained two  
25 associate's degrees and a Licensed Practical Nurse certification.  
26 Id. Plaintiff had past relevant work experience as a licensed  
27 practical nurse. Id.

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## STANDARD OF REVIEW

This court must affirm the Secretary's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record. Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)). The court must weigh "both the evidence that supports and detracts from the Secretary's conclusions." Martinez v. Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

The initial burden of proof rests upon the claimant to establish disability. Howard v. Heckler, 782 F.2d 1484, 1486 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected . . . to last for a continuous period of not less than 12 months. . . ." 42 U.S.C. § 423(d)(1)(A).

The Secretary has established a five-step sequential process for determining whether a person is disabled. Bowen v. Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502, 416.920. First the Secretary determines whether a claimant is engaged in "substantial gainful activity." If so, the claimant is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R. §§ 404.1520(b), 416.920(b).

In step two the Secretary determines whether the claimant

1 has a "medically severe impairment or combination of  
2 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.  
3 §§ 404.1520(c), 416.920(c). If not, the claimant is not  
4 disabled.

5 In step three the Secretary determines whether the  
6 impairment meets or equals "one of a number of listed impairments  
7 that the Secretary acknowledges are so severe as to preclude  
8 substantial gainful activity." Id.; see 20 C.F.R.  
9 §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively  
10 presumed disabled; if not, the Secretary proceeds to step four.  
11 Yuckert, 482 U.S. at 141.

12 In step four the Secretary determines whether the claimant  
13 can still perform "past relevant work." 20 C.F.R.  
14 §§ 404.1520(e), 416.920(e). If the claimant can work, she is not  
15 disabled. If she cannot perform past relevant work, the burden  
16 shifts to the Secretary. In step five, the Secretary must  
17 establish that the claimant can perform other work. Yuckert, 482  
18 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) &  
19 (f). If the Secretary meets this burden and proves that the  
20 claimant is able to perform other work which exists in the  
21 national economy, she is not disabled. 20 C.F.R. §§ 404.1566,  
22 416.966.

#### 23 DISCUSSION

24 At Step One, the ALJ found that plaintiff had not engaged  
25 in substantial gainful activity since her alleged disability  
26 onset date. Tr. 21, Finding 2. See 20 C.F.R. § 404.1520(b).  
27 This finding is not in dispute. At Step Two, the ALJ found that  
28 plaintiff had the following severe impairments: degenerative

1 joint disease of the left knee, foraminal stenosis at C5-6, and  
2 residuals of rheumatic heart disease. Tr. 21, Finding 3. See 20  
3 C.F.R. § 404.1520(c). This finding is in dispute.

4 At Step Three, the ALJ found that plaintiff's impairments  
5 did not meet or equal the requirements of a listed impairment.  
6 Tr. 22, Finding 4. See 20 C.F.R. §§ 404.1520(a)(4)(iii),  
7 404.1520(d). This finding is not in dispute. The ALJ then  
8 determined that plaintiff had the residual function capacity for  
9 light work with an option to alternate positions between sitting,  
10 standing, and walking. She can occasionally climb ramps and  
11 stairs. She cannot climb ladders, ropes or scaffolds. She can  
12 occasionally stoop, kneel, crouch, and crawl; and she should  
13 avoid even moderate exposure to hazards. Tr. 22, Finding 6. See  
14 20 C.F.R. §§ 404.1520(e), 404.1545, 404.1567. This determination  
15 is in dispute.

16 At Step Four, the ALJ found that plaintiff was unable to  
17 perform her past relevant work. Tr. 22, Finding 7. See 20  
18 C.F.R. §§ 404.1520(a)(4)(iv), 404.1520(f). This finding is not  
19 in dispute.

20 Finally, at Step Five, the ALJ found that plaintiff could  
21 perform work existing in significant numbers in the national  
22 economy. Tr. 22, Findings 8-12. See 20 C.F.R.  
23 §§ 404.1520(a)(4)(v), 404.1520(g). This finding is in dispute.

24 Plaintiff asserts that the ALJ made a "clear error of law"  
25 at Step Two when the ALJ found plaintiff suffered from knee,  
26 back, and heart ailments that are "severe," however, not severe  
27 enough to meet a listed impairment contained in Appendix 1,  
28 Subpart P, Regulations No. 4. Tr. 17. The plaintiff has the

1 burden of proving at Step Two that she has a severe impairment  
2 that is expected to result in death or last for a continuous  
3 period of not less than twelve months. See 42 U.S.C. §  
4 1382c(a)(3)(A); 20 C.F.R. § 404.1505. A severe impairment is  
5 also an impairment which significantly limits a plaintiff's  
6 "ability to do basic work activities." 20 C.F.R. §§ 404.1521,  
7 416.921.

8 Plaintiff alleges that the ALJ's finding "ignored  
9 substantial evidence of [plaintiff's] other impairments, and  
10 failed to consider how the combination of those impairments and  
11 the side effects of treatment affected [plaintiff's] ability to  
12 do basic work activities." Plaintiff's Opening Brief, p. 3.  
13 Specifically, plaintiff objects to the ALJ's rejection of both  
14 plaintiff's RSD and mental illness complaints as non-severe. Id.

15 RSD is a chronic pain syndrome most often resulting from  
16 trauma to a single extremity. Social Security Ruling SSR 03-2p,  
17 Title II and XVI. RSD is characterized by chronic pain out of  
18 proportion to the severity of the underlying injury, accompanied  
19 by one or more documented signs. In RSD cases, SSR 03-2p  
20 replaces the Cotton two-part test for subjective complaints of  
21 pain with the specific requirements. Cotton v. Bowen, 799 F.2d  
22 1403 (9<sup>th</sup> Cir. 1986). The claimant alleging disability based on  
23 subjective pain must prove: (1) an underlying impairment which  
24 could; (2) reasonably be expected to produce the pain or other  
25 symptoms alleged. Id. at 1405. When RSD is present the Cotton  
26 two-part test is replaced with the burden of proving chronic pain  
27 coupled with the documented presence of one or more of five  
28 listed signs. A finding of RSD requires: (1) persistent

1 complaints of pain; (2) out of proportion to the underlying  
2 injury; (3) a documented precipitant (underlying injury); and (4)  
3 one or more of the five listed signs (swelling, autonomic  
4 instability, abnormal hair or nail growth, osteoporosis, or  
5 involuntary movement of the affected region). The ALJ should  
6 have evaluated plaintiff's RSD complaint in accordance with SSR  
7 03-2p.

8 Plaintiff presented with a history of RSD in her right  
9 shoulder and a complaint of RSD. Tr. 244. Plaintiff first  
10 alleges that she has persistent complaints of chronic pain in her  
11 shoulder and knees. Plaintiff continued a narcotic chronic pain  
12 management program to treat on-going RSD. Second, plaintiff's  
13 pain in her knees was "out of proportion to objective physical  
14 and radiographic findings," characteristic of RSD. Third,  
15 plaintiff's RSD originally relates to an injury to her right  
16 clavicle for which she continued to wear a plate with five  
17 screws. Finally, plaintiff exhibited one or more of the required  
18 signs.

19 Plaintiff asserts that she exhibited several of the  
20 required signs between her onset and hearing dates. First,  
21 plaintiff alleges that she experienced intermittent swelling of  
22 her shoulder, hands, and knees. Second, the pain in her knees is  
23 attributed to osteoarthritis. Third, plaintiff alleges that she  
24 experiences numerous instances of involuntary movement of the  
25 affected region. Specifically, plaintiff experienced "myoclonic  
26 convulsions, bilateral upper extremity jerking, as well as spasms  
27 in her arms and legs." Plaintiff notes that swelling,  
28 osteoarthritis, and involuntary muscle movement are three of the

1 signs of RSD. SSR 03-2p. Plaintiff concludes that in finding  
2 that her RSD was "non-severe," the ALJ failed to follow the  
3 analysis set forth in SSR 03-2p. The court notes the requirement  
4 that the ALJ "must consider the combined effect of all of the  
5 claimant's impairments on [her] ability to function, without  
6 regard to whether each alone was sufficiently severe." Edlund v.  
7 Massanari, 253 F.3d 1152 (9<sup>th</sup> Cir. 2001). I agree that the ALJ  
8 failed to follow the requirements for rejecting an RSD complaint.

9 Moreover, I find that the ALJ improperly rejected the  
10 opinion of plaintiff's primary care physician in favor of a non-  
11 examining, non-treating physician, without giving specific,  
12 legitimate reasons supported by substantial evidence in the  
13 record. Beginning in 1998, through the last medical record in  
14 June 2003, plaintiff's primary care physician was Dr. Lenore  
15 Fines. Tr. 339, 449, 624. Throughout Dr. Fines' medical notes,  
16 she reports objective signs of RSD. Tr. 317 ("requires  
17 assistance from partner because of her rsd and chronic knee  
18 pain," "Chronic pain syn: some improvement on oramorph, but  
19 requires increase dose of medication"); and tr. 339  
20 ("[Assessment]: chronic pain syndrome not controlled on current  
21 regimen muscle spasm and myoclonic jerks"). Moreover, Dr. Fines  
22 was responsible for the pharmacological management of plaintiff's  
23 pain, a regimen of twenty prescriptions including nitroglycerin  
24 and a daily dose of 260 mg. of morphine. Tr. 584.

25 Instead of addressing Dr. Fines' opinion, the ALJ relied on  
26 a statement by an examining rheumatologist, Dr. Stephen Campbell,  
27 who noted: "[p]lain out of proportion to objective physical and  
28 radiographic findings. She carries a h/o "RSD" from trauma to



1 clavicle; at this time there's nothing objective to suggest this  
2 persists." Tr. 16, 373. Plaintiff argues that Dr. Campbell's  
3 note actually confirms the symptoms of progressive RSD. From the  
4 same treatment note quoted above, Dr. Campbell states: "[g]iven  
5 her long h/o chronic pain and other psych issues, I would not  
6 expect much improvement: she's had chronic pain for a long time  
7 and this is going to persist." Tr. 373. I agree that Dr.  
8 Campbell's note is further indication of: (1) chronic pain out of  
9 proportion to the underlying injury; and (2) pain migrating to  
10 other extremities (from the shoulder to the knee). Both are  
11 symptoms of progressed RSD. SSR 03-2p.

12 Plaintiff also contends that the ALJ erred when he  
13 improperly rejected plaintiff's mental complaints. The ALJ found  
14 that plaintiff's depression, PTSD and panic disorder are not  
15 "severe" impairments. Tr. 16. Plaintiff alleges that in order  
16 to find plaintiff's mental impairments "mild," the ALJ improperly  
17 dismissed plaintiff's treating psychiatrist's opinion without  
18 providing clear and convincing reasons for doing so.

19 Dr. Susan Smith was plaintiff's treating psychiatrist from  
20 April 2000, through June 2003. Tr. 624. In 2000, Dr. Smith  
21 assigned plaintiff a GAF of 40, stating that, "Ms. Chapman  
22 presents with history, symptoms and signs consistent with PTSD  
23 and depression as well as panic symptoms dating and relating to  
24 military experience, with symptoms waxing and waning in severity  
25 over the years in relationship to numerous stressors." Tr. 417.  
26 Dr. Smith treated plaintiff for four years and ultimately opined  
27 that plaintiff suffers from severe affective and anxiety  
28 disorders, and meets the impairment listings 12.04 and 12.06.

1 Tr. 631-38. Dr. Smith further opined that plaintiff had "marked"  
2 degrees of limitation in three out of four areas of functional  
3 limitation. The areas of "marked" limitation included  
4 difficulties in maintaining social functioning, difficulties in  
5 maintaining concentration, persistence or pace, and repeated  
6 episodes of decompensation, each of extended duration. Tr. 638.

7 Great weight is accorded a treating physician's opinion,  
8 and clear and convincing reasons are required to reject such  
9 opinion if it is uncontradicted. Smolen v. Chater, 80 F.3d 1273,  
10 1285 (9<sup>th</sup> Cir. 1996). A treating physician's medical opinion as  
11 to the nature and severity of an individual's impairment must be  
12 given controlling weight if that opinion is well-supported and  
13 not inconsistent with the other substantial evidence in the case  
14 record.

15 In rejecting Dr. Smith's opinion, the ALJ stated that her  
16 testimony was not consistent with the record. The ALJ noted the  
17 third party questionnaire answers prove that plaintiff does not  
18 have anger outbursts. Tr. 16. Plaintiff, however, points to her  
19 ongoing struggle with anger, documented in the record, including  
20 her mother's testimony that plaintiff has increasing anger  
21 outbursts, tr. 230; Dr. Kahn noted a yelling outburst in 1999,  
22 tr. 436; and Dr. Smith's treatment notes refer to plaintiff's  
23 ongoing anger and irritability. Tr. 356, 393, 412, 615, 633.

24 Next, the ALJ dismissed plaintiff's difficulty  
25 concentrating with the observation that plaintiff "attends  
26 medical appointments regularly." Tr. 17. The record, however,  
27 is replete with missed appointments and late arrivals. Tr. 245,  
28 289, 392, 393, 406. Next, the ALJ relied on one treatment note

1 in 2000 to discount the next four years of mental health  
2 treatment provided by Dr. Smith to the plaintiff. Tr. 17. The  
3 record, however, reflects increasingly marked limitations posed  
4 by affective and anxiety-related disorders between 2000 and 2004.  
5 Tr. 175, 286, 393, 571, 614, 624, 628.

6 Finally, the ALJ states plaintiff had no episodes of  
7 decompensation of extended duration. Tr. 17. The regulations,  
8 however, explain that "episodes of decompensation by be inferred  
9 from medical records showing significant alteration in  
10 medication; or documentation of the need for a more structured  
11 psychological support system (e.g., hospitalizations, placement  
12 in a halfway house, or a highly structured and directing  
13 household); or other relevant information in the record about the  
14 existence, severity, and duration of the episode." 20 C.F.R.  
15 § 12.04.

16 The record supports evidence of decompensation between  
17 March 2003, and the hearing date. The record also contains  
18 reports of other decompensation episodes, including violence in  
19 the 1970s, and a throwing episode in 2000. Tr. 412-18. In 2000,  
20 it was reported that plaintiff "yells multiple times a day." By  
21 2002, plaintiff was housebound and required assistance for daily  
22 living. Tr. 105, 168, 196, 204. Plaintiff required a highly  
23 structured and directing household just to manage her  
24 medications. Tr. 221. Plaintiff's psychiatrist reported that  
25 she experienced recurrent severe panic attacks occurring on the  
26 average of least once a week. Tr. 633. I find that extended  
27 episodes of decompensation can be inferred from the record.

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1 Further, Dr. Smith's opinion is consistent with the record.  
2 The ALJ did not properly consider plaintiff's mental illness  
3 complaint. The ALJ erred in dismissing Dr. Smith's testimony and  
4 in rejecting plaintiff's mental illness complaint.

5 Finally, I find that the ALJ erred by rejecting the VA  
6 disability determination. The VA rating decision was issued in  
7 September 2000. Tr. 94. The VA found that plaintiff was 100%  
8 disabled due to "rheumatic heart disease with aortic  
9 insufficiency as well as mitral valve prolapse and mitral  
10 regurgitation." Id. The ALJ rejected the VA's disability rating.  
11 Tr. 19. Specifically, the ALJ found that "in light of the  
12 minimal evidence of functional limitations related to the  
13 claimant's history of heart disease, the undersigned finds that  
14 it is not 100% disabling for purposes of Social Security  
15 disability. Therefore, the opinion of the Veteran's  
16 Administration is given little weight." Id.

17 VA determinations are to be given great weight by the ALJ.  
18 McCartey v. Massanari, 298 F.3d 1072 (9<sup>th</sup> Cir. 2002). An ALJ may  
19 discredit a VA determination of disability with persuasive,  
20 specific, and valid reasons supported by the record. Id. at  
21 1076. The record documents plaintiff's chronic heart disease as  
22 early as 1998, stemming from rheumatic fever suffered in 1972.  
23 Tr. 281, 625. The record also shows that she continued to be  
24 treated for chronic heart disease. Tr. 279. Over the course of  
25 three years decedent had eight visits to the VA for cardiology  
26 related issues, in addition to two EKGs, an Echocardiogram, and  
27 two pulmonary function tests. Tr. 550-51. The record provides  
28 a longitudinal history of plaintiff's chronic heart disease. The

1 VA determination reflected a file sufficiently detailed,  
2 supported by physical examinations, laboratory studies, and  
3 prescribed therapy to support a finding of disability. Tr. 94,  
4 191, 241, 258, 378, 386, 389, 625. The record supports the VA  
5 determination, and further supports a finding of severe  
6 impairment. The ALJ erred in rejecting the VA determination of  
7 disability without persuasive, specific and valid reasons  
8 supported by the record.

9 **CONCLUSION**

10 The Commissioner's decision is not based on substantial  
11 evidence. The Commissioner improperly rejected plaintiff's  
12 treating psychiatrist's opinion and evidence from plaintiff's  
13 treating physician. The ALJ also improperly rejected the VA  
14 disability determination. The Commissioner's decision, therefore,  
15 is reversed and remanded for payment of benefits.

16 IT IS SO ORDERED.

17 Dated this 10 day of May 2006.

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22 Ann Aiken  
23 United States District Judge  
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